

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 8071 of 2004
with
Civil Application No. 2406 of 2004

Shaildevi Bhadani and ors....Petitioners
VS
Thane Mun Corpn and ors..Respondents

Mr Navroz Seervai with Mr Amiwala and V R Shah for
petitioners

Mr. R.S.Apte for respondent nos.1 to 3

Mr.Nitin Thakkar with Rahul Chitnis and Ms
Mahashabde i/b M/s V Deshpande for intervener

CORAM:A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated 20.10.2004

P.C:

Rule.

2. Learned counsel for respondents waive service.
By consent, rule is made returnable forthwith.

3. By this petition petitioners are seeking to
quash and set aside the notices issued by the first
respondent Thane Municipal Corporation dated
14.7.2004 and 16.9.2004 and to direct the first
respondent to issue occupation certificate in
favour of petitioners in respect of Building No. 4
constructed on S No 432(part) at village
Panchpakhadi, Thane and further grant no objection

for water and electricity connection in respect of Building No. 4. Petitioner nos.1 to 5 claim to be owners of S.No. 432(part) at village Panchpakhadi, Thane admeasuring 19200 sq mts and petitioner no. 6 is the developer of property of petitioner nos. 1 to 5 pursuant to an agreement dated 2/3rd April 2004. The said property is part of larger property admeasuring 68 acres of land and belonging to various branches of Bhadani family. According to the petitioners in so far as area of 19200 sq mts is concerned the predecessors in title of petitioner nos.1 to 5 one Damodhar Prasad Bhadani became entitled to the said property as per the consent decree dated 19.3.1967 passed in Suit No. 221 of 1960. The property covered under the consent decree admeasures 13 acres and 8 gunthas and Corporation has approved lay out plan for entire property in 1992. Collector has granted N A permission for user of said property in 1993.

4. In 1993 petitioners submitted building plans for construction of Building Nos.1 to 4 and plans were duly sanctioned. Commencement certificate was issued on 21.2.1994. Building Nos.1 to 3 are fully constructed and occupation certificate has been issued in respect thereof. As far as Building No.4

is concerned plan has been sanctioned for ground plus 7 floors and the construction of the said building is also complete. It appears that one Ganesh S Sawant and Harish M Bhatia filed a civil suit being Suit No. 77 of 2003 in the court of Civil Judge S.D.Thane seeking demolition of buildings constructed by petitioners and for cancelling plans sanctioned in favour of petitioners. In that suit an application for temporary injunction was taken out and trial court granted injunction in respect of Building Nos 3 and 4. Petitioners preferred Appeal From Order No. 768 of 2003 against the order of trial court which came to be allowed by the learned single Judge (Kanade J.) vide order dated 8.3.2004. The learned single Judge held that the plaintiffs have failed to make out any prima facie case and it is clear that plaintiffs have been propped up by some interested parties and without any documentary evidence in their possession have proceeded to obtain an exparte order of injunction on the basis of vague pleadings that area of plot is 12000 sq mts and not 19200 sq mts. Learned single Judge noted that the petitioners have constructed four buildings on the basis of sanctioned plans and after buildings have come up third party rights

have been created and balance of convenience is also in favour of petitioners- original defendants in the suit. Learned single Judge, however, directed that in the event of any further third party interests are created, petitioners shall bring the order of the High Court to the notice of third party purchasers. It was also made clear that the Corporation is free to take action after following procedure of law on the basis of report submitted by TILR. An SLP preferred against this order came to be disposed of on 6.5.2004. The Supreme Court while confirming the order of the learned single Judge directed that no third party interest shall be created except with leave of the trial court.

5. It appears that the application made by the petitioners for occupation certificate for Building No. 4 was rejected by the Corporation vide order dated 14.7.2004. It was noted in the order that following conditions are not complied with:

"i) The certificate from Shri Pravin Kanakia, Architect that the construction as per the sanctioned plan and stability certificate from RCC Consultant has not been

furnished.

ii) The compound wall as per the boundary of the property on the sanctioned plan has not been constructed;

iii) It is necessary that the recreation ground as mentioned in the sanctioned plan be completed.

iv) Condition no.3 of part Occupation Certificate bearing no. VP/88/260/TMC/TDD/l449, dated 8th November 2001 be complied with

v) Condition no.1 of part Occupation Certificate bearing No. VP/88/260/TMC/TDD/3224 dated 3rd January 2003 be complied with

vi) Further there are various suits filed in the Hon'ble Court in respect of the property.

You are aware of the various orders passed at various stages in this suits. If you are

not aware all those orders, you may get the information in that respect from your clients.

Till final decision of the said suits no permissions of whatsoever nature can be granted in this proposal. Kindly take note of the same if possession is given to the flat purchasers in the said building without occupation certificate, appropriate action as per the law shall be taken against you, which kindly note".

Petitioners through their Architects submitted a representation pointing out compliance with above conditions and requested Corporation to grant occupation certificate. Representation was however, rejected on 23.8.2004.

6. At the outset we may mention that the Corporation was not right in refusing to grant occupation certificate on the ground of pendency of the legal proceedings. As indicated earlier injunction granted by the trial court has been vacated by this court and SLP preferred against the order of the learned single Judge is also

dismissed. Therefore mere pendency of litigation cannot be a ground for not issuing occupancy certificate. As far as condition nos. 1, 4 and 5 are concerned, Mr Seervai, learned counsel for petitioners submitted that compliance has been made and necessary documents have been furnished to Corporation and Corporation should be directed to consider the compliance. So far as condition nos. 2 and 3 are concerned the learned counsel submitted that they relate to construction of boundary wall and development of the recreation ground. He submitted that one Nirmal Developers has encroached upon the said property and the petitioners have filed a civil suit being Suit No.199 of 2002 for removal of encroachment and for demolition of unauthorised construction made by Nirmal Developers. He pointed out that in fact the Corporation had initiated action of demolition against the construction made by Nirmal Developers but Nirmal Developers has obtained injunction against the Corporation mainly on the ground that the disputed area falls within the limits of the Mumbai Municipal Corporation and Thane Municipal Corporation has no jurisdiction to take any action in respect of structures erected on the said plot. He submitted that in the above circumstances

petitioners are not in a position to comply with condition nos. 2 and 3 mentioned above.

7. Having regard to the peculiar facts of the case and also having regard to the fact that third party interests have been created we direct the Corporation to consider afresh petitioners' application for occupancy certificate in accordance with law. As far as condition nos 2 and 3 are concerned the Corporation may consider whether a provisional occupancy certificate can be issued in favour of the petitioners to avoid hardship to the flat purchasers. So far as condition nos.1,4, and 5 are concerned Corporation shall verify whether compliance has been made or not. However, we make it clear that Corporation shall not deny permission on the ground of pendency of the litigation in the court between petitioners and interveners. In the result, impugned notices dated 14.7.2004 and 14.9.2004 are quashed and set aside. Corporation is directed to reconsider the application of the petitioners for occupancy certificate in the light of this order and pass appropriate orders within a period of 2 months from today.

8. Mr. Thakkar for applicants in Civil

Application No 2406 of 2004 does not press the application. Civil Application is allowed to be withdrawn.

9. Hearing of the Suit No.199 of 2003 and Suit No. 398 of 2003 is expedited.

10. Petition is accordingly disposed of.